

**Credit Counseling**  
**11 U.S.C. § 109(h)**  
**BR Act Section 106**

*The Act mandates that individuals filing under chapters 7, 11, and 13 must receive an approved credit counseling briefing (subject to exceptions set forth below) in order to be eligible to file a bankruptcy case. This briefing must take place in the 180 day period preceding the date of the filing of the petition.*

- I. Clerk must maintain a publicly available list of approved credit counseling services<sup>1</sup>;
  - A. Post list to court's website, and provide in hard copy at clerk's office public area;
  - B. Upon notification from the UST or BA that a particular agency's approval has been withdrawn, the court shall remove the name from the list.
- II. Debtor indicates on petition whether credit counseling has been obtained (check box)
  - A. If the debtor indicates that they have received credit counseling:
    - 1. Debtor submits certification regarding credit counseling with petition;
      - a. Certification is docketed;
    - 2. Debtor does not submit certification regarding credit counseling with petition, as required by Interim Federal Rule of Bankruptcy Procedure 1007(c), which states that "the documents required by subdivision (b)(3)<sup>2</sup> shall be filed with the petition in a voluntary case."

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<sup>1</sup> These lists have been compiled by the United States Trustee (UST) or Bankruptcy Administrator (BA). These entities, and not the clerk, have sole responsibility for determining what is an "approved" credit counseling service. The list of UST approved credit counseling services can be accessed at [http://www.usdoj.gov/ust/bapcpa/ccde/cc\\_approved.htm](http://www.usdoj.gov/ust/bapcpa/ccde/cc_approved.htm). The list of BA approved services can be obtained from each individual BA's office.

<sup>2</sup> Subdivision (b)(3) of Rule 1007 references the credit counseling certificate.

a. Recommended practice:

Rule 5005(a)(1) of the Federal Rules of Bankruptcy Procedure states that “the clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form...”

Because of the requirements of Rule 5005, it is recommended that if the debtor does not submit the credit counseling certificate with the petition, the court issue a deficiency notice in accordance with local procedure;

- i. The CM/ECF starter dictionary will generate a flag for compliance within deadline set in deficiency notice (the time limit is a local court decision);
- ii. Debtor subsequently submits certification within required time frame, OR;
- iii. Debtor fails to submit certification within required time frame; case is dismissed.

B. If the debtor indicates that he/she has not received credit counseling:

1. Debtor indicates that the waiver of the credit counseling requirement under 11 U.S.C. 109 (h)(4) is applicable, i.e., that the debtor is unable to complete the credit counseling requirement as a result of incapacity or disability, or because debtor is on active military duty in an active combat zone;
  - a. Court sets the matter for hearing and sends notice;
2. Debtor submits “exigent circumstances” certification with petition, stating that he/she attempted, but was unable to, obtain credit counseling within 5 days of making the request;
  - a. Certification is docketed;
  - b. Flag is generated within CM/ECF, setting a 30-day period for compliance;
  - c. Court, for cause, can extend this period for an additional 15 days.

D. Debtor fails to submit either credit counseling or exigent circumstances certification;

1. Recommended practice: Deficiency notice is generated,
2. The CM/ECF stater dictionary will generate a flag for dismissal consistent with deadline in deficiency notice;
3. If documents not submitted within appropriate time frame, case dismissed.